

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Bartels, Bartels & Fox, L.P
Dickinson County, Iowa**

**ADMINISTRATIVE ORDER
NO. 2011-AQ- 02
NO. 2011-SW- 03**

TO: David Bartels, Registered Agent
Bartels, Bartels, & Fox, L.P.
24611 McClelland Lane
Spirit Lakes, Iowa 51360

I. SUMMARY

This Order requires you to: 1) cease all improper solid waste disposal and open burning at any property in the state of Iowa; 2) take immediate steps to ensure that no further improper solid waste disposal and open burning occurs at a parcel of property located at 2479 100th Street, Spirit Lake, Iowa; 3) remove and properly dispose of all remaining solid waste, including ash and debris, from the above-mentioned location; and 4) pay a penalty of \$2,500.00 within 60 days of the receipt of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to Technical Requirements:

Bryon Whiting, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51031
Phone: 712/262-4177

Appeal, if any, to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Relating to Appeal Rights:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of Penalty to:

Director, Iowa Dept. of Natural Resources
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502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this Order.

III. STATEMENT OF FACTS

1. Bartels, Bartels, & Fox, L.P. owns a parcel of property located at 2479 100th Street, Spirit Lake, Iowa (Lot 136 McClelland's Beach in the NW ¼ of Section 10, Spirit Lake Township, Dickinson County, Iowa) (hereinafter "property"). There is a Morton building located on this parcel of property. There is also a mix of year round homes and seasonal cabins in the area. David Bartels is a member and registered agent of Bartels, Bartels, & Fox, L.P.
2. On August 13, 2010, DNR Field Office 3 received a complaint regarding the demolition of a building and the disposal of the building near the Morton building. The complainant stated the building debris would be burned.
3. On August 17, 2010, Bryon Whiting, DNR Field Office 3 environmental specialist senior, investigated the complaint. During the investigation, Mr. Whiting observed evidence of open burning of construction and demolition waste, including asphalt shingles, scrap wood, PVC pipe, a double sink, screen windows, and various other construction and demolition waste. All of the construction and demolition waste was either burned or partially burned. Mr. Whiting also observed waste tires and steel bands from tires in the burn pile.
4. On August 27, 2010, DNR issued a Notice of Violation letter for the open burning and improper solid waste disposal violations discovered by Mr. Whiting on August 17, 2010. The letter stated the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality. Iowa Code section 455B.304 provides that the Commission

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shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Whiting observed evidence of open burning of various solid waste at the property owned by Bartels, Bartels & Fox, L.P. The above facts demonstrate a violation of this provision.

3. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Various solid waste was disposed of through burning at the property owned by Bartels, Bartels & Fox, L.P. rather than being disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, DNR orders Bartels, Bartels & Fox, L.P. to do the following:

1. Immediately cease all improper solid waste disposal and open burning on land it owns in the state of Iowa;
2. Immediately take steps to ensure that no further improper solid waste disposal and open burning occurs at its property;
3. Properly dispose of all remaining solid waste, including all the ash and debris, at its property within 30 days of receipt of this Order. The landfill receipts shall be submitted to DNR Field Office 3 within 10 days of the disposal; and
4. Pay an administrative penalty of \$2,500.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has

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determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty of \$2,500.00. The administrative penalty assessed by this Order is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Failure to follow the solid waste disposal regulations by the improper open burning and disposal of the solid waste has allowed Bartels, Bartels & Fox, L.P. to save time and money. Significant savings was achieved by burning the building and the other solid waste rather than taking it to the landfill, including avoided landfill fees and associated transportation costs. Based on the above considerations, \$300.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The open burning of solid waste releases hazardous air pollutants, particulate matter, and other pollutants. These air pollutants pose a health risk, particularly to persons with pre-existing respiratory problems. Further, the pollutants resulting from open burning may pollute groundwater, and pose a risk to both human health and the environment. Failure to properly dispose of solid waste and failure to properly abate asbestos containing materials threatens the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Based on the above considerations, \$1,500.00 assessed for this factor.

Culpability – The open burning and solid waste regulations have been in place for at least 20 years. Bartels, Bartels & Fox, L.P. has a duty to remain knowledgeable of the DNR’s requirements and to be alert to the probability that it is subject to DNR’s rules. Therefore, \$700.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

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VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in this Order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 3/20 day of
January, 2011.

Con 10-6 Dickinson County (through Barb Stock); Kelli Book; DNR Field Office 3;
VI.C and VII.C.1